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Patsy Ann Krautkramer

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KIMBERLY-CLARK WORLDWIDE, INC.  
Catherine E. Wolf  
401 NORTH LAKE STREET  
NEENAH, WI 54956

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PATSY ANN KRAUTKRAMER, DANIELLE GWEN FINGER,  
GARRY ROLAND WOLTMAN, ELEONORA ALICIA DAIREAUX,  
LEILIANI DEL RUBIO FLORES, and CLAUDIO MALAGONI BUIATTI

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Appeal 2009-003602  
Application 10/664,260  
Technology Center 3700

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Decided: September 1, 2009

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Before TONI R. SCHEINER, MELANIE L. McCOLLUM, and  
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

McCOLLUM, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to an absorbent feminine care article. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

## STATEMENT OF THE CASE

Claims 1-22 are pending and on appeal (App. Br. 1). The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). We will focus on claim 1, which reads as follows:

1. An absorbent feminine care article having a longitudinal direction, a lateral direction, first and second longitudinally opposed end portions, and an intermediate portion located between said end portions, said article comprising:

- a liquid-permeable cover;

- a baffle; and

- an absorbent body sandwiched between the cover and baffle;

- wherein

- said absorbent body includes an intake layer and a longitudinally asymmetric shaping layer;

- said shaping layer is positioned between said cover and said baffle, and has a longitudinal shaping-layer length and a lateral shaping-layer width;

- said intake layer is positioned between said cover and said shaping layer and has a longitudinal intake-layer length and a lateral intake-layer width;

- said intake layer has an area extent which is smaller than an area extent of said shaping layer;

- said shaping layer has first longitudinal half-length, a second longitudinal half-length, a narrow-section, a wide-section, and a transition-section;

- said transition-section is located between said narrow and wide sections of the shaping layer, the transition-section having lateral side edges which interconnect lateral side edges of the narrow-section of the shaping layer with corresponding lateral side edges of the wide-section of the shaping layer;

- said wide-section of the shaping layer includes a maximum lateral width of the shaping layer and includes a terminal end edge located in said first half-length of the shaping layer;

- said narrow-section of the shaping layer includes a terminal end edge located in said second half-length of the shaping layer; and

said intake layer is longitudinally offset toward an article region which is delimited by said first half-length of the shaping layer.

Claims 1-22 stand rejected under 35 U.S.C. § 103(a) as obvious over Burnes (US 6,608,236 B1, Aug. 19, 2003) in view of Bruce (US 2003/0097109 A1, May 22, 2003) (Ans. 3).

The Examiner relies on Burnes for teaching:

an absorbent feminine care article . . . comprising: a liquid-permeable cover in the form of a body-side liner . . . ; a baffle . . . ; and an absorbent body in the form of a distribution/retention layer sandwiched between the cover and baffle . . . ; wherein said absorbent body includes an intake layer 6 and a shaping layer 9 . . . ; said intake layer 6 [being] positioned between said cover and said shaping layer 9 and . . . ha[ving] an area extent which is smaller than an area extent of said shaping layer 9. . . .

(*Id.* at 3-4.)

The Examiner relies on Bruce for teaching “that longitudinally asymmetric (Fig. 7) absorbent articles designed specifically for use in thong undergarments are known in the art and [for] provid[ing] known positioning and shaping of the articles for such thong undergarments” (*id.* at 4). In particular, the Examiner finds that Bruce “teaches that ‘sanitary napkin styles have shapes dictated not by the necessity to place maximum amounts of absorbency in the center of the napkin but rather by the style of panty preferred by the user’” (*id.*). The Examiner also finds:

As can clearly be seen in Fig. 7, which depicts the position of a sanitary napkin in a known U.S. thong, the center of the crotch is at the position of 0 mm on the grid, which is the target insult region, and is located in the wider, front section of the napkin, whose centerline in this grid is at the 20 mm position in the back of the thong.

(*Id.*)

The Examiner concludes:

[I]t would be obvious to one of ordinary skill in the art to modify the article of Burnes for use in a known undergarment style by shifting any or all of the absorbency layers (including the intake layer 6) forward such that the intake layer is longitudinally offset toward an article region which is delimited by said first half-length of the shaping layer 9. Thus, by modifying the garment of Burnes to fit a well-known thong undergarment style in the back of the garment, said transition-section is thus located between said narrow and wide sections of the modified shaping layer 9 . . . and said intake layer would be longitudinally offset toward an article region which is delimited by said first half-length of the shaping layer.

(*Id.* at 4-5.)

Appellants argue that “it’s not immediately evident that a person of ordinary skill would combine the references” (App. Br. 3). Appellants also argue that, “[e]ven if the references are combined, nowhere is a person of ordinary skill led to longitudinally offset the location of an intake layer relative to other components” (*id.*).

## ISSUES

Have Appellants shown that the Examiner erred in combining Burnes with Bruce to provide a multilayer structure including a longitudinally asymmetric shaping layer?

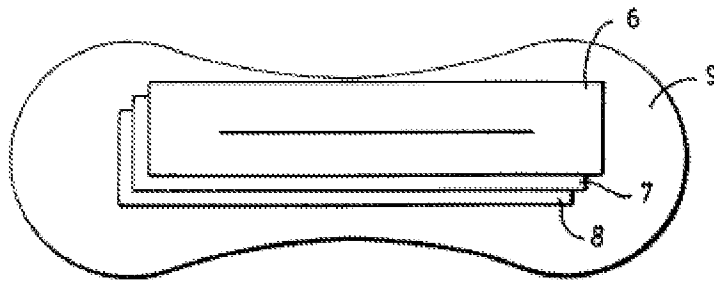
If not, have Appellants shown that the Examiner erred in concluding that it would have been obvious to longitudinally offset an intake layer towards a first, wider half of the shaping layer?

### FINDINGS OF FACT

1. Burnes discloses “a personal care product system having a distribution/retention layer and a pad shaping layer” (Burnes, col. 2, ll. 37-38).

2. Burnes also discloses that the primary purpose of the pad shaping layer “is pad shaping, [but that] this layer can accept liquid from the distribution/retention strip especially when the distribution/retention strip is highly loaded with liquid” (*id.* at col. 12, ll. 17-20).

3. Burnes Figure 14 is reproduced below:



Burnes Figure 14 depicts an absorbent system having a “four layer design where the intake layer 6 is above distribution/retention layer 7, which is above transfer delays strip 8 and finally the pad shaping layer 9” (*id.* at col. 13, ll. 41-67).

4. Burnes also discloses personal care products including “feminine hygiene pads having a body side liner, a distribution/retention layer, a transfer delay layer, a pad shaping or secondary absorbent layer, and a backsheet” (*id.* at col. 23, ll. 15-19).

5. Bruce discloses sanitary napkins and panty liners designed for various styles of panties (Bruce ¶¶ [0028]-[0033]).

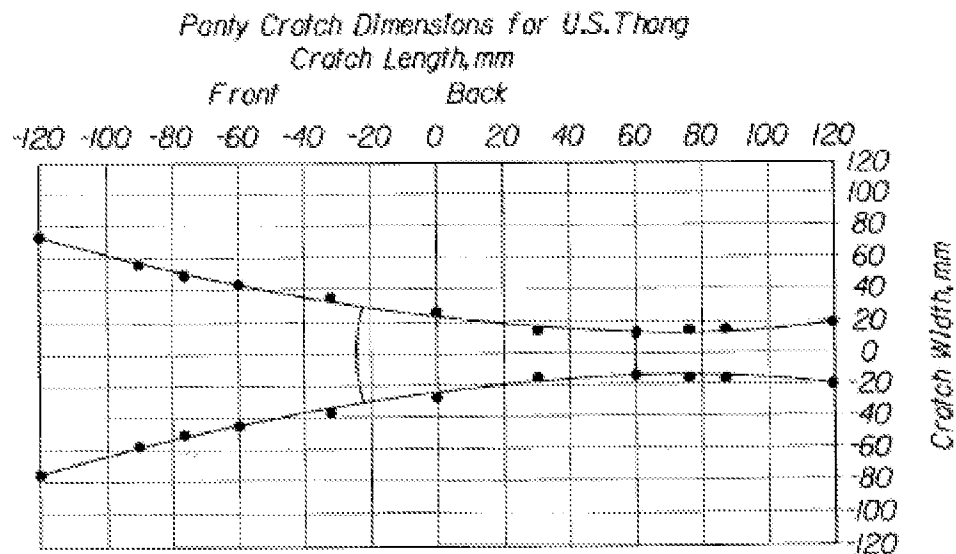
6. In particular, Bruce discloses that sanitary napkins and panty liners for “thong” panties “are designed to be wider in the front and very narrow in the back to accommodate the extremely narrow back configuration of this type of panty” (*id.* at ¶ [0028]).

7. Bruce also discloses that the “[a]bsorbent articles comprise an absorbent core, which provides the means for absorbing body fluids, with the optional addition of a topsheet, backsheet, side wrapping elements etc.” (*Id.* at ¶ [0034].)

8. In addition, Bruce discloses that the “absorbent core can comprise any material used in the art for such purpose” (*id.* at ¶ [0036]).

9. Bruce also discloses that, “[i]n a preferred embodiment, the absorbent core comprises an absorbent open cell foam” (*id.* at ¶ [0037]).

10. Bruce Figure 7 is reproduced below:



Bruce Figure 7 illustrates average panty crotch dimensions for thong panties marketed in the United States (*id.* at ¶ [0014] & Fig. 7).

## PRINCIPLES OF LAW

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). The relevant question is “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *Id.* at 418.

Obviousness “analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim.” *Id.* Instead, it proper to “take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* at 421.

## ANALYSIS

Appellants argue that “a person of ordinary skill, reading [Bruce], is led to employ the fewest materials possible in the purportedly inventive system” (App. Br. 3). We do not agree. Although Bruce discloses that preferably “the absorbent core comprises an absorbent open cell foam,” Bruce also discloses that the “absorbent core can comprise any material used in the art for such purpose” (Findings of Fact (FF) 8-9). In addition, although Bruce discloses that topsheets and backsheets are optional (FF 7), Appellants have not shown that Bruce teaches away from using topsheets or backsheets. Thus, we do not agree with Appellants’ argument that one of ordinary skill in the art would have been led away from using Burnes’s multi-layered feminine hygiene product to form Bruce’s panty-specific product. Instead, we agree with the Examiner that one of ordinary skill in the art would have had reason to modify Burnes’s product to have a wider



front and a narrower back, as disclosed in Bruce (FF 6), for use with thong panties (Ans. 4-5).

Appellants also argue, “[e]ven if the references are combined, nowhere is a person of ordinary skill led to longitudinally offset the location of an intake layer relative to other components” (App. Br. 3). We are not persuaded.

We recognize that neither reference discloses an intake layer that is longitudinally offset towards a first, wider half of a shaping layer. However, the Examiner finds:

As can clearly be seen in [Bruce] Fig. 7, which depicts the position of a sanitary napkin in a known U.S. thong, the center of the crotch is at the position of 0 mm on the grid, which is the target insult region, and is located in the wider, front section of the napkin, whose centerline in this grid is at the 20 mm position in the back of the thong.

(Ans. 4.) Based on this finding, which Appellants do not dispute, the Examiner concludes that it would have been obvious to offset the intake layer towards the wider, front section (*id.*). Given that the target insult region is in the wider, front section, we conclude that Appellants have not adequately shown why the Examiner’s position is in error.

### CONCLUSION

Appellants have not shown that the Examiner erred in combining Burnes with Bruce to provide a multilayer structure including a longitudinally asymmetric shaping layer. In addition, Appellants have not shown that the Examiner erred in concluding that it would have been obvious to longitudinally offset an intake layer towards a first, wider half of

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the shaping layer. We therefore affirm the obviousness rejection of claims 1-22.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Ssc:

KIMBERLY-CLARK WORLDWIDE, INC.  
Catherine E. Wolf  
401 NORTH LAKE STREET  
NEENAH WI 54956